

## Department of Homeland Security

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into the United States shall not be subject to the provisions of section 212(a)(9)(B) of the Act.

(6) Denial of admission under this section is not a denial of the alien's application for adjustment. The alien may continue to pursue his or her application for adjustment from abroad, and may also appeal any denial of such application from abroad. Such application shall be adjudicated in the same manner as other applications filed from abroad.

(f) *Stay of final order of exclusion, deportation, or removal.* The filing of a LIFE Legalization adjustment application on or after June 1, 2001, and on or before June 4, 2003, stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the LIFE Legalization application, unless the district director who intends to execute the order makes a formal determination that the applicant does not present a prima facie claim to LIFE Legalization eligibility pursuant to §§245a.18(a)(1) or (a)(2), or §§245a.18(c)(2)(i), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v), or (c)(2)(vi), and serves the applicant with a written decision explaining the reason for this determination. Any such stay determination by the district director is not appealable. Neither an Immigration Judge nor the Board has jurisdiction to adjudicate an application for stay of execution of an exclusion, deportation, or removal order, on the basis of the alien's having filed a LIFE Legalization adjustment application.

[66 FR 29673, June 1, 2001, as amended at 67 38351, June 4, 2002]

### **§ 245a.14 Application for class membership in the CSS, LULAC, or Zambrano lawsuit.**

The Service will first determine whether an alien filed a written claim for class membership in the CSS, LULAC, or Zambrano lawsuit as reflected in the Service's indices, a review of the alien's administrative file with the Service, and by all evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that, before October 1, 2000, he or she was a class member applicant in the

CSS, LULAC, or Zambrano lawsuit. An alien should include as many forms of evidence as the alien has available to him or her. Such forms of evidence include, but are not limited to:

(a) An Employment Authorization Document (EAD) or other employment document issued by the Service pursuant to the alien's class membership in the CSS, LULAC, or Zambrano lawsuit (if a photocopy of the EAD is submitted, the alien's name, A-number, issuance date, and expiration date should be clearly visible);

(b) Service document(s) addressed to the alien, or his or her representative, granting or denying the class membership, which includes date, alien's name and A-number;

(c) The questionnaire for class member applicant under CSS, LULAC, or Zambrano submitted with the class membership application, which includes date, alien's full name and date of birth;

(d) Service document(s) addressed to the alien, or his or her representative, discussing matters pursuant to the class membership application, which includes date, alien's name and A-number. These include, but are not limited to the following:

(1) Form I-512, Parole authorization, or denial of such;

(2) Form I-221, Order to Show Cause;

(3) Form I-862, Notice to Appear;

(4) Final order of removal or deportation;

(5) Request for evidence letter (RFE); or

(6) Form I-687 submitted with the class membership application.

(e) Form I-765, Application for Employment Authorization, submitted pursuant to a court order granting interim relief.

(f) An application for a stay of deportation, exclusion, or removal pursuant to a court's order granting interim relief.

(g) Any other relevant document(s).

[66 FR 29673, June 1, 2001, as amended at 67 38351, June 4, 2002]

### **§ 245a.15 Continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988.**

(a) *General.* The Service will determine whether an alien entered the

United States before January 1, 1982, and resided in continuous unlawful status since such date through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that he or she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988.

(b) *Evidence.* (1) A list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

(2) The following evidence may establish an alien's unlawful status in the United States:

- (i) Form I-94, Arrival-Departure Record;
- (ii) Form I-20A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student Status—For Academic and Language Students;
- (iii) Form IAP-66, Certificate of Eligibility for Exchange Visitor Status;
- (iv) A passport; or
- (v) Nonimmigrant visa(s) issued to the alien.

(c) *Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

(1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(2) The alien was maintaining residence in the United States; and

(3) The alien's departure from the United States was not based on an order of deportation.

(d) *Unlawful status.* The following categories of aliens, who are otherwise eligible to adjust to LPR status pursuant to LIFE Legalization, may file for adjustment of status provided they resided continuously in the United States in an unlawful status since prior to January 1, 1982, through May 4, 1988:

(1) An eligible alien who entered the United States without inspection prior to January 1, 1982.

(2) *Nonimmigrants.* An eligible alien who entered the United States as a nonimmigrant before January 1, 1982, whose authorized period of admission as a nonimmigrant expired before January 1, 1982, through the passage of time, or whose unlawful status was known to the Government before January 1, 1982. Known to the Government means documentation existing in one or more Federal Government agencies' files such that when such document is taken as a whole, it warrants a finding that the alien's status in the United States was unlawful. Any absence of mandatory annual and/or quarterly registration reports from Federal Government files does not warrant a finding that the alien's unlawful status was known to the Government.

(i) *A or G nonimmigrants.* An eligible alien who entered the United States for duration of status (D/S) in one of the following nonimmigrant classes, A-1, A-2, G-1, G-2, G-3 or G-4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982. A dependent family member may be considered a member of this class if the dependent family member was also in A or G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

(ii) *F nonimmigrants.* An eligible alien who entered the United States for D/S in one of the following nonimmigrant classes, F-1 or F-2, who completed a full course of study, including practical training, and whose time period, if any, to depart the United States after completion of study expired prior to January 1, 1982. A dependent F-2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Form I-94, Arrival-Departure Record, that extended beyond January 1, 1982, is considered eligible if the principal F-1 alien is found eligible.

(iii) *Nonimmigrant exchange visitors.* An eligible alien who was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Act), who entered the United States before January 1, 1982, and who:

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(A) Was not subject to the 2-year foreign residence requirement of section 212(e) of the Act; or

(B) Has fulfilled the 2-year foreign residence requirement of section 212(e) of the Act; or

(C) Has received a waiver for the 2-year foreign residence requirement of section 212(e) of the Act.

(3) *Asylum applicants.* An eligible alien who filed an asylum application prior to January 1, 1982, and whose application was subsequently denied or whose application was not decided by May 4, 1988.

(4) *Aliens considered to be in unlawful status.* Aliens who were present in the United States in one of the following categories were considered to be in unlawful status:

(i) An eligible alien who was granted voluntary departure, voluntary return, extended voluntary departure, or placed in deferred action category by the Service prior to January 1, 1982.

(ii) An eligible alien who is a Cuban or Haitian entrant (as described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 and at § 212.5(g) of this chapter), who entered the United States before January 1, 1982. Pursuant to section 1104(c)(2)(B)(iv) of the LIFE Act, such alien is considered to be in an unlawful status in the United States.

(iii) An eligible alien who was paroled into the United States prior to January 1, 1982, and whose parole status terminated prior to January 1, 1982.

(iv) An eligible alien who entered the United States before January 1, 1982, and whose entries to the United States subsequent to January 1, 1982, were not documented on Form I-94.

### § 245a.16 Continuous physical presence from November 6, 1986, through May 4, 1988.

(a) The Service will determine whether an alien was continuously physically present in the United States from November 6, 1986, through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application evidence establishing his or her continuous physical presence in the United States from November 6, 1986, through May 4, 1988. Evidence establishing the alien's continuous phys-

ical presence in the United States from November 6, 1986, to May 4, 1988, may consist of any documentation issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument.

(b) For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

(c) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous physical presence as required at the time of filing an application under this section.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002]

### § 245a.17 Citizenship skills.

(a) *Requirements.* Applicants for adjustment under LIFE Legalization must meet the requirements of section 312(a) of the Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). Unless an exception under paragraph (c) of this section applies to the applicant, LIFE Legalization applicants must establish that:

(1) He or she has complied with the same requirements as those listed for naturalization applicants under §§ 312.1 and 312.2 of this chapter; or